

AMENDMENTS TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

MARCH 6, 1990.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture,
submitted the following

REPORT

[To accompany H.R. 4077]

The Committee on Agriculture, to whom was referred the bill (H.R. 4077) to amend the Consolidated Farm and Rural Development Act to require borrower good faith with respect to Farmers Home Administration loans; to improve the management of such delinquent loans, including limiting the writedown of such loans; and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION. 1. SALE OF INVENTORY PROPERTY.

(a) OFFERING PRICE; USE RESTRICTION.—Section 335(c) of the Consolidated Farm and Rural Development Act (hereinafter referred to in this Act as the "Act") (7 U.S.C. 1985(c)) is amended by amending paragraph (2)(B) to read as follows:

"(B) offer such land—

"(i) for sales pursuant to subsection (e)(1)(C), at a price not greater than that which reflects the appraised market value of such farmland; and

"(ii) for all other sales, at a price not greater than that which reflects the fair market value of such land as determined by bids after advertising or by negotiated sale;"

(b) CONFORMING CHANGES.—Section 335(e)(4) of the Act (7 U.S.C. 1985(e)(4)) is amended by—

(1) striking subparagraph (B); and

(2) redesignating subparagraph (C) as (B).

SEC. 2. GOOD FAITH REQUIREMENT FOR PRESERVATION RIGHTS.

Section 335(e)(1) of the Act (7 U.S.C. 1985(e)(1)) is amended—

(1) in subparagraph (A)(i) by striking the period at the end and inserting ", if such borrower-owner has acted in good faith with the Secretary, as defined in regulations issued by the Secretary, in connection with such loan."; and

(2) in subparagraph (C)(i) by striking the period at the end and inserting “, if such borrower-owner has acted in good faith with the Secretary, as defined in regulations issued by the Secretary, in connection with the loan of such borrower-owner for which such property served as security.”.

SEC. 3. INCLUSION OF PROPERTY IN CALCULATING RECOVERY VALUE.

Section 353(c)(2) of the Act (7 U.S.C. 2001(c)(2)) is amended by—

- (1) in subparagraph (B)(iv) striking “costs.” and inserting “costs; plus”; and
- (2) inserting a new subparagraph (C) as follows:

“(C) the value, as determined by the Secretary, of any property not included in subparagraph (A) if the property is specified in any security agreement with respect to such loan and the Secretary determines that the value of such property should be included for purposes of this section.”.

SEC. 4. INCLUSION OF ASSETS IN CALCULATING THE VALUE OF THE RESTRUCTURED LOAN.

Section 353(c)(3) of the Act (7 U.S.C. 2001(c)(3)) is amended by adding at the end the following:

“(C) **ASSETS CONSIDERED.**—For the purpose of calculating the value of restructured loans under this subsection, the Secretary may consider all the assets of the borrower, other than those determined by the Secretary to be essential for necessary family living expenses or essential to the operation of the farm.”.

SEC. 5. NET RECOVERY BUY-OUT; LIMITATION ON USE; RECAPTURE; APPLICATION DEADLINE; GOOD FAITH REQUIREMENT.

Section 353(c)(6) of the Act (7 U.S.C. 2001(c)(6)) is amended to read as follows:

“(6) **PURCHASE AT RECOVERY VALUE.**—

“(A) **TERMINATION OF LOAN OBLIGATION.**—The obligations of the borrower to the Secretary under the loan shall terminate if—

- “(i) the value of the restructured loan is less than the recovery value;
- “(ii) the borrower has not previously been relieved of loan obligations under this paragraph with respect to any other loan;
- “(iii) the borrower has acted in good faith with the Secretary in connection with the loan as defined in regulations issued by the Secretary; and

“(iv) within 90 days after receipt of the notification described in paragraph (4)(B), the borrower pays (or obtains third-party financing to pay) the Secretary an amount equal to the recovery value.

“(B) **RECAPTURE.**—The Secretary may require, as a condition of the termination of loan obligations under this paragraph, that the borrower enter into an agreement with the Secretary providing that if the borrower—

“(i) sells or otherwise conveys the real property used to secure such loan within 10 years after the date of such agreement; and

“(ii) realizes a gain on such sale or conveyance over the amount of the recovery value of the loan,

then the Secretary may recapture part or all of the difference between the recovery value of the loan and the fair market value (on the date of such sale or conveyance) of the property securing the loan. In no event shall any such agreement provide for recapture of an amount that exceeds the difference between such recovery value and the outstanding balance of principal and interest owed on the loan immediately prior to the termination of any loan obligations under this paragraph.”.

SEC. 6. LIMITATION ON USE OF DEBT WRITE-DOWN.

(a) **LIMITATION ON USE OF DEBT WRITE-DOWN.**—Section 353(d) of the Act (7 U.S.C. 2001(d)) is amended by adding the following new paragraphs:

“(3) **LIMITATION TO SINGLE WRITE-DOWN.**—The Secretary may not restructure a loan under this section by means of a write-down of principal or interest for any borrower who has received a previous write-down of principal or interest under this section.

“(4) **LIMITATION ON AMOUNT OF WRITE-DOWN.**—The Secretary may not write-down principal or interest under this section in excess of \$250,000 for any one borrower.

“(5) **CUT-OFF DATE.**—No loan made or insured by the Secretary pursuant to this title on or after January 6, 1988 shall be eligible for write-down or termination of loan obligations under this section.”.

(b) **TECHNICAL AMENDMENT.**—Section 353(e)(1) is amended by striking “written off” and inserting “written down”.

SEC. 7. EXTENSION OF DEADLINES.

(a) **APPLICATION FOR LOAN SERVICE.**—Section 331D(e) of the Act (7 U.S.C. 1981d(e)) is amended by striking “45 days” and inserting “60 days”.

(b) **PROCESSING OF APPLICATIONS.**—Section 353(c)(4) of the Act (7 U.S.C. 2001(c)(4)) is amended by striking “60 days” and inserting “90 days”.

BRIEF EXPLANATION

The bill would amend the Consolidated Farm and Rural Development Act to eliminate the requirement that the Secretary of Agriculture sell farmland in inventory to operators of not larger than family-size farms at a price that reflects the anticipated average annual income from farming the land.

The bill would require borrowers to act in good faith with the Secretary in order to be eligible for termination of loan obligations¹ or for preference² with respect to the purchase of inventory property.

The bill would allow the Secretary to consider all assets of the borrower other than the value of unencumbered assets determined by the Secretary to be essential for necessary family living expenses or essential to the operation of the farm in determining the value of restructured loans³ and to consider all assets listed on the security agreement for a loan in determining the recovery value of the collateral.⁴

The bill would limit each borrower to one write-down or one termination of loan obligations. The bill would also limit write-downs for any one borrower to no more than \$250,000.

The bill would extend the time period to 90 days for exercise by the borrower of the termination of loan obligations option and would extend the time period for potential recapture by the Secretary of Agriculture of any gain realized by the borrower from the sale of property subsequent to the exercise of such option from 2 years to 10 years.⁵ The bill would also limit the amount of loan obligations which could be terminated for any one borrower to no more than \$250,000.

The bill would extend the deadlines for application by the borrower for loan restructuring⁶ and for processing of such applications⁷ by the Secretary to 60 days and 90 days respectively.

PURPOSE AND NEED

The Farmers Home Administration (FmHA) is the Federal lender of last resort to farmers who do not qualify for commercial credit. FmHA makes direct loans to family farmers and ranchers and also guarantees some loans originated by commercial lenders. Many of the loans in the FmHA loan portfolio are considered to be high-risk.

¹ See section 353(c)(6) of the Consolidated Farm and Rural Development Act (the “Act”), (7 U.S.C. 2001(c)(6)). The option afforded by this provision is commonly referred to as a “net recovery buy-out.”

² Section 355(e)(1)(C) (7 U.S.C. 1985 (e)(1)(C)).

³ Section 353(c)(3), (7 U.S.C. 2001(c)(3)).

⁴ Section 353(c)(2), (7 U.S.C. 2001(c)(2)).

⁵ Section 353(c)(6), (7 U.S.C. 2001(c)(6)).

⁶ Section 331D(e), (7 U.S.C. 1981d(e)).

⁷ Section 353(c)(4), (7 U.S.C. 2001(c)(4)).

FmHA's direct loan portfolio almost tripled between 1978 and 1985. This expansion in lending occurred during an agricultural recession characterized by declining commodity prices and exports and was due primarily to three factors. First, severe and widespread natural disasters in 1978 and the early 1980's resulted in record numbers of emergency disaster loans. Second, large numbers of loans were made under the economic emergency program from 1978-81 and again in 1984. Finally, there was record lending under the farm operating program in fiscal year 1985.

The increase in FmHA lending coupled with the agricultural recession of the late 1970's into the mid-1980's resulted in an increase in loan payment delinquencies. The Agricultural Credit Act of 1987 (P.L. 100-233), which was signed into law on January 6, 1988, in general directs FmHA to modify the debts of borrowers who are 180 days or more delinquent through the use of a series of primary loan servicing or restructuring options. The restructuring options include loan consolidation, rescheduling, or reamortization; interest rate reduction; deferral, set-aside, or write-down of outstanding principal and accumulated interest; or any combination of these actions.

As of November 30, 1989, FmHA had mailed notices to 75,352 delinquent borrowers. Of this number, 32,548 (43 percent) of the accounts had been resolved.

The Agricultural Credit Act of 1987 has succeeded in keeping many FmHA borrowers on the farm. However, some problems have arisen which were not anticipated when the Act was passed by the Congress and the Committee is concerned that some loan servicing decisions are being made that were not intended by the Congress. H.R. 4077 is directed at addressing the following problems and clarifying Congressional intent.

A major problem identified by both the FmHA and the General Accounting Office (GAO) is the "bad faith" borrower. Examples of bad faith would include: (1) selling or disposing of property securing loans without FmHA approval, (2) repaying other lenders more than required, (3) abandoning the property securing FmHA loans, and (4) having resources available that could have been, but were not, used to make FmHA loan payments. Under provisions of the Agricultural Credit Act of 1987, FmHA cannot disqualify bad faith borrowers from the net recovery buy-out option or loan preservation servicing provided under that Act. GAO has identified examples of borrowers acting in bad faith and receiving the net recovery buy-out or preservation servicing benefit. In a January 5, 1990, letter from FmHA to Congressman Glenn English, Chairman of the Conservation, Credit, and Rural Development Subcommittee, the FmHA identified 284 instances of bad faith borrowers.

The Office of the General Counsel at the Department of Agriculture has determined that, because of conflicting language, FmHA must offer property in its inventory at its capitalization value to operators of not larger than family-size farms. The capitalization value is based on the average annual income that may be reasonably anticipated to be generated from farming the land. Large differences often arise between the capitalization value and the market value of the land when the property is near or adjacent to urban or developing areas. In such instances, the market value of

the property may be several times the capitalization value. The requirement that FmHA must offer to dispose of the land at the capitalization value provides the buyer with a windfall at taxpayers' expense.

The amendments to the Consolidated Farms and Rural Development Act made by the Agricultural Credit Act of 1987 required FmHA to calculate the value of a borrower's restructured loan. FmHA has interpreted this law as limiting their consideration for purposes of calculating the value of a restructured loan to only those assets listed on the borrower's security agreement. Some FmHA delinquent borrowers have considerable other assets not pledged as security to the FmHA loan. These assets may be other farm or nonfarm real estate, stocks, bonds, or certificates of deposit. FmHA is forced to ignore these other assets when considering the restructured value of a loan, resulting in large amounts of debt being restructured or forgiven that the borrower could repay by using these other assets.

Some borrowers have acted in bad faith with the Secretary by selling or otherwise converting assets listed on their security agreement without FmHA's permission. This results in a greater termination of loan obligations for the borrower under the net recovery buy-out provisions since FmHA has interpreted the law to preclude the inclusion of such assets in calculating the net recovery value.

The FmHA borrower who receives a debt restructuring must enter into a ten year shared appreciation agreement by which FmHA recovers a certain percentage of appreciation in market value when the borrower sells the property, pays off the loan or discontinues farming. On the other hand, the borrower who buys out a loan at net recovery value must sign only a two year recapture agreement with FmHA. During the two year period, FmHA is able to recover some of its loss if the property is sold and a gain is realized. The recapture amount is equal to all or part of the difference between the buy-out price and the market value of the property at the time of the buy-out.

The Agricultural Credit Act of 1987 did not limit the number of times a borrower could be restructured with debt write-down. As a result, it is possible that a borrower whose debt was written-down could obtain additional write-downs until the value of his debt equalled net recovery value. Knowing that additional write-downs are possible, a borrower has less incentive to remain current on loans to FmHA.

Although the 1987 Act did not place a dollar limitation on the amount of debt that could be forgiven, it was the intent of the Committee that the Act help family farmers. On January 25, 1990, in testimony before the Subcommittee on Conservation, Credit, and Rural Development, U.S. Department of Agriculture Under Secretary for Small Community and Rural Development, Roland Vautour, stated that the average of all write-downs was \$165,068 and the average of all write-offs was \$202,819. However, the Under Secretary also reported to the Subcommittee that almost 100 instances of debt forgiveness in excess of \$1 million had already been approved. The greatest amount was a write-down of \$5.6 million on principal and interest of almost \$10 million. The Committee does

not feel that such massive write-downs and write-offs represent family sized farming operations.

The 1987 Act was signed into law on January 6, 1988 and did not specify a date beyond which borrowers would no longer qualify for debt restructuring with write-down or write-off. As a result, borrowers who have taken out new loans with FmHA have little incentive to remain current.

H.R. 4077 also recognizes that it takes time to develop a restructuring request, process such requests, and for the eligible borrower to arrange financing for the net recovery buy-out. Accordingly, H.R. 4077 also provides more time in the restructuring process.

H.R. 4077, if approved by the Congress and signed into law by the President, will close the loopholes and clarify the intent of the Congress with respect to portions of the Agricultural Credit Act of 1987.

SECTION-BY-SECTION ANALYSIS

Section 1—Sale of Inventory Property

Section 1 would amend the Consolidated Farm and Rural Development Act ("the Act") to require the Secretary of Agriculture to offer inventory land for sale to individuals given preference under section 335(e)(1)(C) of the Act at a price not greater than that which reflects the appraised market value, and to all others at a price not greater than that which reflects the fair market value as determined by bids after advertising or by negotiated sale. Section 1 would also repeal section 335(e)(4)(B) of the Act which requires the Secretary to offer farmland in inventory for sale at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

Section 2—Good Faith Requirement for Preservation Rights

Section 2 of the bill would amend section 335(e)(1) of the Act by adding a requirement that borrower-owners act in good faith with the Secretary in connection with their loans in order to be eligible to repurchase or lease back, or to receive preference pursuant to the Act with respect to the purchase or leasing of, real property that has been acquired from them by the Secretary through foreclosure or otherwise.

Section 3—Inclusion of Property in Calculating Recovery Value

Section 3 would amend section 353(c)(2) of the Act to require that the calculation of the recovery value of collateral securing a loan take into account the value of any property listed in any security agreement associated with such loan, if the Secretary determines that the value of such property should be included in such calculation for purposes of that section.

Section 4—Inclusion of Assets in Calculating the Value of the Restructured Loan

Section 4 would amend section 353(c)(3) of the Act to authorize the Secretary, for the purpose of calculating the value of a delinquent borrower's loan if restructured under that section, to consider all the assets of the borrower other than the value of property in

which there is no security interest determined by the Secretary to be essential for necessary family living expenses or essential to the operation of the farm.

Section 5—Net Recovery Buy-Out; Limitation on Use; Recapture; Application Deadline; Good Faith Requirement

Section 5 would amend section 353(c)(6) of the Act to limit the use of the net recovery buy-out option under that paragraph to borrowers who have acted in good faith with the Secretary in connection with their loans. The bill would allow only one net recovery buy-out or write-down per borrower. The bill would also extend to 90 days the time period during which a delinquent borrower, who has been determined ineligible for restructuring, could exercise the net recovery buy-out option.

The bill would extend to 10 years the term of the agreement, which may be a condition of the net recovery buy-out, between the borrower and the Secretary to allow the Secretary to recapture part or all of the difference between the recovery value and the fair market value of the real property if the borrower sells or otherwise conveys the real property and realizes a gain. The bill would limit the amount of such recapture to the difference between the net recovery value and the amount of principal and interest owed by the borrower immediately prior to the net recovery buy-out. The bill would limit the amount of loan obligations that could be terminated under section 353(c)(6) of the Act to no more than \$250,000 per borrower.

Section 6—Limitation on Use of Debt Write-Down

Section 6(a) would amend section 353(d) of the Act by adding a provision to limit the use of debt write-down to no more than once for any one borrower. The bill would also add a provision to limit the total amount that could be written down under that section for any one borrower to no more than \$250,000 and would limit the use of write-down or net recovery buy-out under this section solely to loans made or insured prior to January 6, 1988.

Section 6(b) would make a technical, stylistic change.

Section 7—Extension of Deadlines

Section 7(a) would amend section 311D(e) of the Act to extend the filing deadline for applications by delinquent borrowers for loan service from 45 days to 60 days following the receipt by such borrowers of the required notice from the Secretary with respect to available loan service programs.

Section 7(b) would amend section 353(c)(4) of the Act to extend the deadline for consideration and processing by the Secretary of requests by borrowers for restructuring from 60 days to 90 days following the receipt of such requests.

COMMITTEE VIEWS

It has come to the Committee's attention that certain problems have arisen in the establishment of conservation easements on land that is acquired by the Secretary through forfeiture of Farmers Home Loans. Specifically, farmers who have chosen to exercise

their right of redemption in order to lease-back or buy-back these forfeited properties, have been unaware that conservation easements could be applied to the lands upon forfeiture to FmHA. In addition, individuals seeking to purchase forfeited properties have been surprised to learn that conservation easements are to be transferred with title to the land upon purchase.

The Committee believes that these problems can and should be avoided. To do so, the Committee directs FmHA to give written notification to delinquent borrowers that conservation easements could apply to the land should the owner choose to forfeit the land to federal ownership. Such notification should be given at least 15 days before the owner exercises the right to forfeit the land. The notification should clearly delineate the terms of operation associated with such easements and should make clear that these easements will convey with the property even if the owner should choose to repurchase or lease the land from FmHA.

In addition, FmHA should make other prospective purchasers of farmland previously forfeited to the government aware of the conservation easements that will apply to the land should they choose to purchase it. Such notification should include clear delineation of the areas subject to easements and the terms of operation associated with such easements.

To facilitate the implementation of the FmHA conservation easement program, the Committee strongly recommends that the Department seek to improve its working relationship with the U.S. Fish and Wildlife Service. Greater cooperation between FmHA and the Service could aid considerably in reducing the confusion and frustration that has characterized the implementation of this program to date.

COMMITTEE CONSIDERATION

HEARINGS

On January 25, 1990, the Subcommittee on Conservation, Credit and Rural Development held a public hearing for the purpose of receiving testimony regarding farm loan programs of the Farmers Home Administration. The Subcommittee heard from representatives of the Farmers Home Administration, the General Accounting Office, and several organizations.

FULL COMMITTEE

The Committee on Agriculture met on February 27, 1990, to consider H.R. 4077. Chairman de la Garza recognized Mr. English to explain the provisions of the bill.

Mr. English stated that a questionnaire relating to the issues addressed in this bill was sent out to members of the Committee the previous October, and that this legislation reflects what the members of the Committee indicated they would like to do about those issues in their responses to the questionnaire. Mr. English asked unanimous consent that the Subcommittee on Conservation, Credit, and Rural Development be discharged from consideration of the bill and it was so ordered.

Mr. Marlenee offered an amendment to the bill that would, in determining the value of the restructured loan under section 353(c) of the Consolidated Farm and Rural Development Act, exclude from consideration by the Secretary assets associated primarily with businesses other than the farm for which the loan was made, or assets reasonably necessary for medical, educational, or essential living expenses.

Mr. Johnson offered an amendment to Mr. Marlenee's amendment which would further exclude assets essential to the operation of the farm and essential living expenses from such determination by the Secretary, and would clarify that appeal rights do exist from such determinations.

Mr. English stated his strong opposition to the amendments as offered. Mr. Marlenee asked unanimous consent to withdraw his amendment in order to work a compromise between Mr. Johnson, Mr. English, Mr. Coleman and himself.

Mr. English offered an amendment in the form of a substitute for the Marlenee amendment and it was adopted by a voice vote.

Mr. Stenholm offered an amendment to establish a cut-off date for the origination of loans which are eligible for net recovery buyout or write-down and it was adopted by a voice vote.

The Committee agreed by voice vote to report H.R. 4077 as amended to the House with the recommendation that the bill do pass.

ADMINISTRATION POSITION

The views of the Administration on H.R. 4077, as amended, to amend the Consolidated Farm and Rural Development Act to require borrower good faith with respect to Farmers Home Administration loans; to improve the management of such delinquent loans, including limiting the writedown of such loans; and for other purposes, are set forth in the following letter to the Chairman of the Committee on Agriculture:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC.

Hon. E (KIKI) DE LA GARZA,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your request for a report on H.R. 4077, a bill "to amend the Consolidated Farm and Rural Development Act to require borrower good faith with respect to Farmers Home Administration loans; to improve the management of delinquent loans, including limiting the writedown of such loans, and for other purposes".

The Department of Agriculture supports enactment of this bill.

The Agricultural Credit Act of 1987, enacted on January 6, 1988, provided for significant changes in farm loan servicing procedures of the Farmers Home Administration (FmHA). Most significantly, the loan restructuring provisions of the legislation mandated a write-down of delinquent debt to the recovery value of collateral, if necessary for the borrower to cashflow, where the return to govern-

ment is as great with the writedown as under foreclosure. The legislation also provided for the borrower unable to restructure his debt to repurchase the FmHA debt at the discounted recovery value.

Regulations implementing the Agricultural Credit Act of 1987 were published on September 14, 1988. FmHA has already resolved 32,548 cases of the 75,352 delinquent borrowers notified of the availability of assistance under the restructuring provisions. In the vast majority of cases, the borrower had acted in good faith and we think the assistance provided was fair and appropriate.

However, significant problems have also been experienced. We believe H.R. 4077 as reported February 27, 1990, provides an opportunity to correct those problems.

The Department has estimated enactment of the bill's good faith provisions alone would reduce outlays in fiscal year 1991. The longer range impacts of the amendments on program integrity should contribute to further significant reductions in outyear delinquency and outlays. Enactment of H.R. 4077 is consistent with farm bill proposals of the Department and will close loopholes without damaging legitimate assistance for farmers in need who have acted in good faith.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CLAYTON YEUTTER, *Secretary*.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 were not received by the Committee prior to the filing of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 4077, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 4077, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

* * * * *

SEC. 331D. NOTICE OF LOAN SERVICE PROGRAMS.

(a) * * *

* * * * *

(e) CONSIDERATION OF BORROWERS FOR LOAN SERVICE PROGRAMS.—The Secretary shall consider a farmer program borrower for all loan service programs if, within **[45]** 60 days after receipt of the notice required in this section, the borrower requests such consideration in writing. In considering a borrower for loan service programs, the Secretary shall place the highest priority on the preservation of the borrower's farming operations.

* * * * *

SEC. 335. (a) * * *

* * * * *

(c)(1) * * *

(2) Notwithstanding any other provision of law, the Secretary shall sell suitable farmland administered under this subtitle to operators (as of the time immediately after such contract for sale or lease is entered into) of not larger than family sized farms, as determined by the county committee. In selling such land, the county committee shall—

(A) * * *

[(B) offer suitable land at a price not greater than that which reflects the appraised market value of such land;]

(B) offer such land—

(i) for sales pursuant to subsection (e)(1)(C), at a price not greater than that which reflects the appraised market value of such farmland; and

(ii) for all other sales, at a price not greater than that which reflects the fair market value of such land as determined by bids after advertising or by negotiated sale;

* * * * *

(e)(1)(A)(i) During the 180-day period beginning on the date of acquisition, or during the applicable period under State law, the Secretary shall allow the borrower from whom the Secretary acquired real property used to secure any loan made to the borrower under this title (hereinafter referred to in this paragraph as the "borrow-

er-owner") to purchase or lease such property **[.]**, if such borrower-owner has acted in good faith with the Secretary, as defined in regulations issued by the Secretary, in connection with such loan.

* * * * *

(C) The Secretary shall give preference in the sale or lease, with option to purchase, of property that has been foreclosed, purchased, redeemed, or otherwise acquired by the Secretary to persons in the following order:

(i) The immediate previous borrower-owner of the acquired property **[.]**, if such borrower-owner has acted in good faith with the Secretary, as defined in regulations issued by the Secretary, in connection with the loan of such borrower-owner for which such property served as security.

* * * * *

(4)(A) * * *

[(B)] The Secretary shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.]

[(C)] (B) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the appropriate county committee shall, by majority vote, select the operator who may purchase such land, on such basis as the Secretary may prescribe by regulation.

* * * * *

SEC. 353. DEBT RESTRUCTURING AND LOAN SERVICING.

(a) * * *

* * * * *

(c) RESTRUCTURING DETERMINATIONS.—

(1) * * *

(2) RECOVERY VALUE.—For the purpose of paragraph (1), the recovery value of the collateral securing the loan shall be based on—

(A) the amount of the current appraised value of the property securing the loan; less

(B) the estimated administrative, legal, and other expenses associated with the liquidation and disposition of the loan and collateral, including—

(i) * * *

* * * * *

(iv) other administration attorney's **[costs.]** costs; plus

(C) the value, as determined by the Secretary, of any property not included in subparagraph (A) if the property is specified in any security agreement with respect to such loan and the Secretary determines that the value of such property should be included for purposes of this section.

(3) VALUE OF THE RESTRUCTURED LOAN.—

(A) * * *

* * * * *

(C) *ASSETS CONSIDERED.*—For the purpose of calculating the value of restructured loans under this subsection, The Secretary may consider all the assets of the borrower, other than those determined by the Secretary to be essential for necessary family living expenses or essential to the operation of the farm.

(4) *NOTIFICATION.*—Within [60] 90 days after receipt of a written request for restructuring from the borrower, the Secretary shall—

(A) * * *

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[(6) *TERMINATION OF LOAN OBLIGATIONS.*—If the value of the restructured loan is less than the recovery value and if, within 45 days after receipt of the notification described in paragraph (4)(B), the borrower pays (or obtains third-party financing to pay) the Secretary an amount equal to the recovery value, the obligations of the borrower to the Secretary under the loan shall terminate, except that the Secretary may require, as a condition of such termination of loan obligations, that the borrower enter into an agreement with the Secretary if the borrower sells or otherwise conveys the real property used to secure such loan within 2 years after the date of such agreement. Any such agreement shall provide for the recapture of part or all of the difference between the recovery value of the loan and the fair market value (on the date of such agreement) of the property securing the loan if the borrower realizes a gain on the sale of conveyance over the amount of the recovery value of the loan. In no event shall any such agreement provide for recapture of an amount that exceeds the difference between such recovery value and the fair market value of the property securing the loan on the date of such agreement.]

(6) *PURCHASE AT RECOVERY VALUE.*—

(A) *TERMINATION OF LOAN OBLIGATIONS.*—The obligations of the borrower to the Secretary under the loan shall terminate if—

(i) the value of the restructured loan is less than the recovery value;

(ii) the borrower has not previously been relieved of loan obligations under this paragraph with respect to any other loan;

(iii) the borrower has acted in good faith with the Secretary in connection with the loan as defined in regulations issued by the Secretary; and

(iv) within 90 days after receipt of the notification described in paragraph (4)(B), the borrower pays (or obtains third-party financing to pay) the Secretary an amount equal to the recovery value.

(B) *RECAPTURE.*—The Secretary may require, as a condition of the termination of loan obligations under this paragraph, that the borrower enter into an agreement with the Secretary providing that if the borrower—

(i) sells or otherwise conveys the real property used to secure such loan within 10 years after the date of such agreement; and

(ii) realizes a gain on such sale or conveyance over the amount of the recovery value of the loan, then the Secretary may recapture part or all of the difference between the recovery value of the loan and the fair market value (on the date of such sale or conveyance) of the property securing the loan. In no event shall any such agreement provide for recapture of an amount that exceeds the difference between such recovery value and the outstanding balance of principal and interest owed on the loan immediately prior to the termination of any loan obligations under this paragraph.

(d) PRINCIPAL AND INTEREST WRITE-DOWN.—

(1) * * *

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(3) *LIMITATION TO SINGLE WRITE-DOWN.*—The Secretary may not restructure a loan under this section by means of a write-down of principal or interest for any borrower who has received a previous write-down of principal or interest under this section.

(4) *LIMITATION ON AMOUNT OF WRITE-DOWN.*—The Secretary may not write-down principal or interest under this section in excess of \$250,000 for any one borrower.

(5) *CUT-OFF DATE.*—No loan made by the Secretary pursuant to this title on or after January 6, 1988, shall be eligible for write-down or net recovery buyout under this section.

(e) SHARED APPRECIATION ARRANGEMENTS.—

(1) *IN GENERAL.*—As a condition of restructuring a loan in accordance with this section, the borrower of the loan may be required to enter into a shared appreciation arrangement that requires the repayment of amounts written [off] down or set aside.

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